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EXTRAORDINARY

PART I—Section 1

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ELECTION COMMISSION, INDIA NOTIFICATIONS

New Delhi, the 10th October 1952

No. 19/332/52-Elec.III.—WHEREAS the election of Shri Jaswant Raj of Ladnun House, Bagar, Ward No. 3, Jodhpur, as a member of the House of the People from the Jodhpur Parliamentary Constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Banraj of Ward No. 10, Jalap Mohalla, Jodhpur;

NOW, THEREFORE, in exercise of the powers conferred by sections 86 and 88 of the said Act, the Election Commission hereby appoints:—

- (1) Shri M. P. Asthana, Retired District Judge, Lucknow.
- (2) Shri Magroop Chand, District Judge, Bikaner.
- (3) Shri Goverdhandas T. Gajria, Advocate, Raja Cycle Bungalow, No. 1, Srinagar Road, Ajmer.

as the members of the Election Tribunal for the trial of the said petition and further appoints Shri M. P. Asthana to be the Chairman of the Tribunal so constituted and Bikaner as the place where the trial of the petition shall be held.

No. 19/83/52-Elec.III.—WHEREAS the election of Shri Shantilal Girdharlal Parikh, Mill Agent of the Kalol Bharat Vijay Mills Ltd., Kalol, as a member of the House of the People, from the Mehsana East constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Purushottamdas Ranchhoddas Patel, Pleader, Mehsana;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 83 OF 1952

Coram :

Shri B. C. Vakil, B.A. (Hons.), LL.B.—*Chairman*,
 Shri T. P. Gnogale, B.A. (Hons.), LL.B., } *Members of the Election*
 Shri A. A. Adarkar, B.A., LL.B., } *Tribunal.*

In the matter of the Representation of the People Act, 1951

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

and

In the matter of the Election petition presented thereunder by
 Shri Purushottamdas Ranchhoddas Patel, a pleader, residing at
 Mehsana in Mehsana East Constituency—*Petitioner.*

Versus.

- (1) Shantilal Girdharlal Parikh, a Mill Agent of the Kalol Bharat Mills, Ltd., residing at Kalol in Mehsana East Constituency.
- (2) Manlal Dhulabhai Patel, a pleader, residing at Kalol in Mehsana East Constituency.
- (3) Nathalal Ambalal-Patel, an agriculturist, residing at Tintodana in Kalol Taluka in Mehsana East Constituency—*Respondents.*

This is an election petition filed by Shri Purushottamdas Ranchhoddas Patel who was one of the candidates for election from the Mehsana East Constituency of the House of Parliament to get the election of the successful candidate Shri Shantilal Girdharlal Parikh, respondent No. 1, declared void and to get it declared that he, the petitioner, was duly elected or in the alternative to get the election declared wholly void.

2. The respondents were duly served but only Shri Shantilal Parikh has appeared to contest the petition. The petition is proceeding *ex-parte* against respondents Nos. 2 and 3.

3. 18th September, 1952 was the date fixed for the first hearing of the petition. On 4th September, 1952, the petitioner filed three applications. He filed Ex. 9 to hear the petition at Mehsana, he filed Ex. 10 for amending his petition and Ex. 11 for amending the list of corrupt practices. Notice was ordered to issue to the other party. On 18th September, 1952, respondent filed replies Exs. 16, 17 and 18 to applications Exs. 9, 10 and 11. When the election petition was called out Shri Sudhalkar, the learned Advocate who appeared for respondent No. 1, raised three preliminary objections to the maintainability of the petition itself. Firstly, he urged that the petition was not maintainable owing to the non-compliance of the mandatory provision of Section 117 of the Representation of the People Act, 1951 as according to Shri Sudhalkar the petitioner had failed to enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. Second preliminary objection of Shri Sudhalkar was that Section 83(2) mandatorily provided that the petition shall be accompanied by a list signed and verified in like manner (in the manner laid down by the Code of Civil Procedure) setting forth full particulars of any corrupt practice which the petitioner alleged, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice and the petition was incompetent as the provision was contravened. Shri Sudhalkar thirdly contended that after the Election Commission drew the attention of the petitioner to this non-compliance, which it was non of its duty to do, the petitioner subsequently forwarded a verified list of particulars to the Election Commission. This list subsequently filed could not cure the non-compliance which should result in the rejection of the petition. Shri Sudhalkar further contended that even assuming that the list of particulars submitted to the Commission could be looked to it was no list of particulars at all and was such as would not have helped the petitioner even if it had accompanied the petition and that even if the list were to be accepted as properly verified it was filed after the expiry of the period of presentation prescribed by Rule 119. Shri Sudhalkar, therefore, urged that these

preliminary objections be first heard. Parties agreed to the preliminary objections being heard first. The learned pleaders were, therefore, heard on the following points:—

- (1) Does the petition offend against the provisions of Section 117 of the Representation of the People Act 1951? Whether it should be dismissed on that account?
 - (2) Is the petition incompetent for non-compliance of Section 83(2) of the Representation of the People Act, 1951? Could the petitioner cure the defect by subsequently forwarding another list of particulars of corrupt and illegal practices to the Election Commission?
 - (3) If it was open to the petitioner to subsequently forward a list of corrupt and illegal practices to the Election Commission, is that a list of particulars of corrupt practices as required by Section 83(2)?
4. The findings of the Tribunal are as under:—
- (1) It was a substantial compliance under the circumstances. The petition should not be dismissed on that account.
 - (2) Yes it is incompetent; No.
 - (3) Does not arise in view of the finding on point 2.

Reasons:—For the first contention Shri Sudhalkar relied on the copy of the letter of the Secretary, Election Commission, dated 24th May 1952, the reply of the petitioner dated 4th June 1952 received by the Election Commission on 9th June 1952. The petitioner, the recipient of the letter, admitted the copy and himself referred to it. In the letter dated 24th May 1952 the Secretary of the Election Commission pointed out to the petitioner that the receipt showing a deposit of the sum of Rs. 1000 sent by the petitioner was not in the regular Chalan form and bore the stamp of the Bank of Baroda instead of a Government Treasury stamp and drew the attention of the petitioner to Section 117 of the Act which required that the deposit should be either in a Government Treasury or in the Reserve Bank of India. The Secretary called upon the petitioner to make good this defect within 15 days failing which the petition would have to be dismissed for non-compliance of Section 117 of the Act and at the same time observed that the letter was without prejudice to the provisions of the law applicable to the case. The petitioner replied by his letter dated 4th June 1952, as follows:—

“With reference to para. 2 of your letter I write that there is no regular Government treasury at Mehsana as Mehsana was once a part of Baroda State. The Government treasury office does not receive any amount in cash but the practice is that Chalan are submitted to the Treasury Officer, he endorses and the amount is to be paid in the account of the Mehsana Treasury to the Bank of Baroda and the bank passes receipt on the Chalan which I have sent to you. The Bank of Baroda has received the deposit on behalf of the Mehsana Treasury and this is the practice followed by the Government Treasury at Mehsana.”

The contention of Shri Sudhalkar was that Section 117 required Government Treasury receipt showing the deposit in the Treasury or in the Reserve Bank and nothing else. It was urged that the difficulty of the petitioner would not make something else a Government Treasury receipt and that if the petitioner could not get a Government Treasury receipt, the other alternative of depositing Rs. 1,000 in the Reserve Bank of India should have been resorted to. It was urged that on failure of the petitioner to do so the Commission had no option but to dismiss the petition under the mandatory provision of Section 85 of the Act which states that the Commission shall dismiss the petition. It was urged that as the Commission had failed to do what it was incumbent on it to do the Tribunal should do so under Section 90(4) which provided that notwithstanding anything contained in Section 85, the Tribunal may dismiss the election petition which did not comply with the provisions of Section 81, Section 83 or Section 117. Shri Sudhalkar further urged that in the context of Sections 117 and 85 the word “may” in Section 90(4) had the force of “shall” and this Tribunal should dismiss the petition if Section 117 is contravened. As against this Shri Dholakia urged that Section 117 was not contravened as in the circumstances stated by the petitioner the Baroda Bank receipt was equivalent to the Government Treasury receipt, that on the explanation given by the petitioner the Commission had accepted it as such and that when the Election Commission had not dismissed the petition under Section 85 the Tribunal was not bound to do so under Section 90(4). Shri Dholakia urged that “may” could be construed as “shall” only if there was a duty cast on the Tribunal to reject the petition and the Tribunal had a discretion which it should exercise in favour of the petitioner as at least the requirement was substantially complied with.

6. The Tribunal has carefully considered the provisions of Sections 117, 85 and 90(4) of the Act and in the opinion of the Tribunal the Tribunal is not bound to dismiss the petition for non-compliance of the provisions of Section 117. It has a discretion in the matter as indicated by the word "may". The Act while it provides how the Election Commission should act in case of non-contravention of Section 117, uses the word "shall" in Section 85 of the Act but it advisedly uses the word "may" when it refers to the Tribunal in Section 90(4) of the Act. The Tribunal is not sitting in appeal as a merely appellate body over the action of the Commission and it is not bound to pass an order which the Commission was required to pass. Shri Sudhalkar realized the different phraseology employed with regard to the Election Commission and the Tribunal but he contended that in the context of Sections 85 and 117 "may" in Section 90(4) had the force of "shall". The Tribunal does not accept the contention of Shri Sudhalkar. The words "Notwithstanding anything contained in Section 85" indicate that notwithstanding the fact that it is mandatory for the Election Commission to dismiss the petition for the contraventions referred to, it is discretionary for the Tribunal whether to dismiss the petition or not. As pointed out by Shri Dholakia by reference to Maxwell, 1937 (edition) page 216, "may" would have the force of "shall" if a duty is cast on the Tribunal to dismiss the petition. The word "may" which is primarily permissive may in certain circumstances be treated as mandatory but it should be shown that the person who has to act is left no discretion in the matter. The heading to Section 85 is "Petition when to be dismissed". Section 90(4) which forms part of Section 90 prescribes the procedure before the Tribunal.

6. Coming to the alleged contravention itself, it is true that the receipt of the Baroda Bank about money being received in the Baroda Bank on the account of the Government Treasury is not itself literally the Government Treasury receipt but in the circumstances of the case when it was not possible to deposit the amount in cash in the Government Treasury at Mehsana and to obtain a Government Treasury receipt as required under Section 117 the receipt produced by the petitioner substantially complies with the provisions of Section 117. It is not a strict or literal compliance of the provisions of Section 117 but it is a substantial compliance that was possible in the circumstances of the case. On receiving the letter of the petitioner dated 4th June, 1952, the Commission appears to have taken the Baroda Bank receipt as tantamount to the Government Treasury receipt for it proceeded to appoint the Election Tribunal for the case and in the letter dated the 8th July 1952 addressed to the Chairman, the Election Commission has stated "The Treasury receipt sent by the petitioner showing a deposit of Rs. 1000 as required in Section 117 of the Representation of the People Act, 1951, has been retained in the Commission." It is true we are not bound by the view or interpretation of the Election Commission but so far as the Election Commission is concerned it has taken the Baroda Bank receipt as tantamount to the Government Treasury receipt. The Tribunal is of opinion that though there is no strict or literal compliance with Section 117 there is a substantial compliance of Section 117 and apart from what the Election Commission could have done or ought to have done, the Tribunal does not deem fit to exercise its discretion in dismissing the petition. After all the provision was meant to secure the deposit of costs and when that is done, the Tribunal feels that it is not proper for it to dismiss the petition on that ground.

7. The first non-compliance of Section 83(2) pointed out by Shri Sudhalkar that the petitioner had failed to file a list of corrupt and illegal practices as required by Section 83(2). A list purporting to be of corrupt and illegal practices did accompany the petition but instead of the verification of the list required by Section 83(2), at the foot of the list was a statement purporting to be the verification of the petition and not the list itself.

8. It is quite clear from the petition of the petitioner that he wishes to get the election of respondent No. 1 declared void or to get the whole election set aside on the ground of corrupt and illegal practices. In the list purporting to be of corrupt and illegal practices filed by the petitioner he has virtually bodily incorporated paragraphs 3 to 6 of the petition excepting para 7 which refers to the relief claimed. The petition thus claims relief solely on the basis of alleged corrupt and illegal practices. Section 83(2) requires that the petition shall be accompanied with a list setting forth full particulars of such corrupt and illegal practices including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practices and the date and place of the commission of such practices.

9. The manner of verification is stated in Order 6 Rule 15 of the Civil Procedure Code which provides that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some persons acquainted with the facts of the case. It is also provided that the person verifying will state by reference to

the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verifies upon information received and believed to be true. It will be enough to peruse the so called verification at the foot of the petition to find that there is no verification of the list at all. What the petitioner states at the foot of the list is as under:—

"I, Purushottamdas Ranchoddas Patel of Mehsana inhabitant a Pleader Presiding at Mehsana in the Mehsana District of Bombay State the petitioner abovenamed do solemnly declare that what is stated in paragraphs 1—2—3—4—5—6 of the foregoing petition is true to my own knowledge and that what is stated in the remaining paragraph 4 is stated on information and belief and I believe the same to be true."

Strictly speaking the statement at the foot of the list is not a verification but a declaration on the solemn affirmation. Apart from this minor discrepancy the material defect is that the statements are made with reference to "the foregoing petition" and not with regard to the list itself which is required to be verified. Reference is to the paragraphs of the petition and therefore the verification relates to the petition and not to the list. There is entire absence of a statement that the petitioner verifies the contents in the list to be true either of his knowledge or information and belief. No paragraph of the list is referred to at the foot of the list. Even if we were to construe the act of making a solemn affirmation to be a verification, there is verification of the petition at the foot of the list and not the verification of the list. The Election Commission invited the attention of the petitioner by its letter dated 24th May 1942 to the fact that the verification made by him at the foot of the list referred to the paragraphs of the pleadings contained in the petition and not to the paragraphs of the list of corrupt or illegal practices as required by Section 83(2) of the Act. The petitioner in his reply dated 4th June 1952 thanked it for pointing out the mistake and sent a fresh list along with that letter which according to him was duly verified. It is, therefore, clear that the list is not a verified list according to the manner provided in the Code of Civil Procedure and the petition was, therefore, not accompanied by a list verified as required under the provisions of Section 83(2) of the Act. There is, therefore, non-compliance of Section 83(2) with regard to the requirement that a verified list should accompany the petition.

10. It is also contended that the list suffers from other infirmities. It is urged that the nature of particulars do not comply with the requirement of Section 83(2) which demands that full particulars of corrupt or illegal practice including as full a statement as possible as to the names of the parties alleged to have committed such corrupt and illegal practices and the date and place of the commission of each such practice should be set forth. It is urged that the particulars are so general and vague that they are no particulars at all.

11. The Tribunal has gone through the list of particulars accompanying the petition and found this grievance to a large extent to be correct. Statements in para 1 of the list do not constitute particulars but it is a statement that the return of expenses was till then not published. Similarly, the statements in paragraphs 3, 4 and 5 are not particulars. It is paragraph 2 consisting of subparagraphs 2(a) to 2(i) which is to be scrutinized to see whether the statements made therein fulfil the requirement of Section 83(2).

Para 2(a) does not contain any major or minor corrupt or illegal practice referable to respondent No. 1 or his agent. It does not contain any averment coming under any corrupt practice or illegal practice coming within the purview of Section 123 or Section 125 of the Representation of the People Act. It does not state which agent or agents of the petitioner was or were not allowed to represent him and at what polling booth or stations and by which presiding officers.

The statements made in para. 2(b) of the list are too vague and too general to be called particulars. The petitioner's grievance appears to be that the respondent No. 1 in order to win votes supplied cloth of the Kalol Bharat Vijay Mills of which he is alleged to be the managing director and agent at ex-mill rates which he did not do before. The cloth is said to have been supplied to cloth merchants, the members of their families, their family friends and employees and members of the Cloth Mahajans of Mehsana, Kalol, Kadl, Vijapur, Mansa and other places. No name of any cloth merchants, the members of their families, friends and their employees is mentioned in this paragraph. Not one name of the members of the Mahajans is also specified. No time or place of the commission of the alleged corrupt practice is mentioned. It is alleged that respondent No. 1 gave cloth to the above stated persons to induce them to vote and induced others to vote for him. It is an entirely vague and general allegation which frustrates the very object of giving particulars,

namely, to give notice to the respondent as to what case he has to meet. The allegations are so general that the evidence can be adjusted and moulded at any time before actual hearing. In the opinion of the Tribunal there cannot be anything vaguer or more indefinite than this.

In para. 2(c) the petitioner submitted that the first respondent was guilty of major corrupt practice under Section 123(2) of the Representation of the People Act, 1951, and that the election was not a free election but was held under coercion and in any event under undue influence. Section 123 lays down the undue influence, that is, direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent with the free exercise of his electoral right.

The allegations of the petitioner in para. 2(c) are briefly that the Home Minister in company of the District Superintendent of Police of Mchana and other police officers visited certain named villages and other villages and addressed several meetings on 17th and 18th of December 1951 canvassing votes for first respondent. He also alleged that the Home Minister called several persons who commanded influence over the voters and persuaded them to work and vote for the first respondent. It is his contention that this tour of the Home Minister was organized and the said meetings were addressed by the Home Minister with the connivance and active approval of respondent No. 1 who was present at many of the said meetings. On these allegations the petitioner has relied for his contention that this tour of the Home Minister with a large number of police officers and other Government servants gave to the voters an impression that the Government was interested in the election of the first respondent and the result, according to him, was that the voters were unduly influenced and coerced to vote for the first respondent and in this way the tour interfered with the free exercise of the electoral rights of the electoral who attended the meetings and of the voters who heard of those meetings.

Now under section 83(2) full particulars of the alleged corrupt practice and also a full statement as far as possible as to the names of the parties alleged to have committed such corrupt practice and the date and place of the Commission of such practice are required to be stated.

Analysing the statements in para. 2(c) in the light of the requirements of Section 83(2) the Tribunal finds that the petitioner has given the name of the party who is alleged to have committed the corrupt practice *viz.*, the Home Minister. He has also mentioned the dates and the names of places on and at which the Home Minister is alleged to have addressed meetings canvassing votes for the first respondent. This Tribunal is of the opinion that so far as these speeches are concerned the requirements of Section 83(2) as regards particulars are satisfied.

Now proceeding to consider the other allegations, the general allegation of the petitioner that the Home Minister called several persons who had influence with voters is vague as he has not given a single name of such person, nor the places from which these persons came. He has not also given particulars as to how and in what manner the Home Minister tried to influence these persons. The Tribunal, therefore, thinks that the particular in regard to the alleged calling of several persons to influence voters is too vague and indefinite and is not such as to give the opposite party notice as to the precise case he is called upon to meet. Besides, these particulars do not fulfil the requirements of Section 83(2) and as such are not valid and proper particulars and they will have to be struck off. The Tribunal is of the opinion that out of the—allegations made by the petitioner enumerating different particulars which serve to influence unduly and coerce the electors the only valid particulars are the particulars as regards the meetings as mentioned above. But for the Tribunal's opinion about the validity of the list, it would have given the petitioner an opportunity to prove these particulars and if necessary would have called upon him to give further and better particulars in regard to these allegations.

Now turning to para. 2(d) the petitioner has stated that as stated in para. 2(c) of his petition assistance was obtained to further his prospects at the election from the Home Minister, the District Superintendent of Police and other police officers serving under the state of Bombay by the first respondent, and or his agent or with the connivance of the first respondent and or his agent. This, according to the petitioner, is a major corrupt practice under Section 123 (8) of the Act. Now that sub section states that "The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by

such persons." Reading together the allegations made in clauses (c) and (d) of para. 2 of the petition the Tribunal is of the opinion that there are sufficient particulars given in regard to the alleged assistance mentioned in para. 2(d) and the Tribunal would have allowed the petitioner to substantiate these allegations, but by reasons of the view which the Tribunal has taken about the legality of the filing of the list that opportunity cannot be given.

Para. 2(e) does not refer to any particular of expenses alleged to have been incurred or authorised by the first respondent or his agent and still not include in his return.

Para. 2(f) purports to give particulars of a major corrupt practice under Section 123(7) of the Representation of the People Act, 1951, that is, the incurring or authorizing by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of the Act or any Rule made thereunder. Para. 2(f) does not state that the first respondent or his agent had incurred or authorized any expenditure or employed any person in contravention of the Act or any Rule. There is no averment that the first respondent or his agent had employed the Congress. The expenses are alleged to have been incurred by the Congress. There are no particulars about any expenses incurred under the Authority of respondent No. 1 or his agent and there are also no particulars as to the extent, nature and purpose of the expenses and as to the persons to whom the monies were paid. No dates or places are specified.

Para. 2(g) also refers to an alleged corrupt practice under Section 123(7). This para. also suffers from the same defects as the foregoing one. There is no allegation that the expenses of pamphlets and leaflets were incurred or authorized by the first respondent or his agent.

Para. 2(h) aims at alleging corrupt practice under Section 123(5) of the Act. That provision refers to the publication by a candidate or his agent or by any other person by the connivance of the candidate or his agent of any statement of fact with regard to the personal character of conduct of any candidate which he either believes to be false or does not believe to be true. The petitioner generally refers to leaflets annexed and marked collectively 'C'. The alleged false or untrue statements are not detailed from the bundle of pamphlets. It is stated at page 351 of the Law of Elections and Election Petitions in India by Nanak Chand as under:—

"In allegations of publication of false statements where the exact nature of the publication appearing in registered newspaper is specified in the petition, the very words complained of may be added later as 'further particulars'. But the case of posters or pamphlets is different owing to chance of fabrication."

We are admittedly dealing with leaflets so far the group 'C' is concerned. Coming to 'D' and 'E' it is obvious that they cannot be by an stretch of imagination be called particulars of any illegal or corrupt practice committed in connection with the election of respondent No. 1 as annexure 'D' is an issue of the "Khedut" a vernacular weekly dated 27th February, 1949 and annexure 'E' is an issue of the same weekly dated 20th March, 1949. In para. 2(h) sub-para. 3 petitioner has made certain allegations about exercise of coercion and intimidation on said communities, groups, sections and members thereof. It is not stated what members and of what communities, exercised coercion and intimidation on what communities, groups, sections and members thereof. The statements are too vague and general and do not amount to particulars as required by law.

Para. 2(i) also contains a general allegation that the accounts submitted by respondent No. 1 are not correct and omits expenses which were incurred. It does not state what expenses were incurred, by whom, on what date, for what purpose and at what place. The petitioner cannot be permitted to launch the Tribunal into a roving inquiry into the election expenses incurred by respondent No. 1 by vaguely alleging that respondent No. 1 spent more than Rs. 25,000.

12. The result of the scrutiny of the list accompanying the petition is that it is not a verified list as required by Section 83(2), it does not in majority of cases set forth full particulars of the alleged corrupt or illegal practices, it does not in large number of instances state the date and place of the commission of such practices and the averments actually made are of too vague and general a character to put the first respondent to any notice. They are in fact no particulars as required by law at all. The petition is, therefore, not accompanied by a list of corrupt and illegal practice as required by Section 83(2) and there is a non-compliance of that Section.

13. The Commission by its letter dated 24th May, 1952 drew the attention of the petitioner that the verification of the list of corrupt or illegal practices was not in order. The petitioner then forwarded to the Commission another list at the foot of which the petitioner made a solemn declaration with reference to paragraphs of the list. It is urged that the petitioner had already filed a verified list and the initial defect if any was cured. It is urged that the Election proceeding is governed by the Civil Procedure Code and better and full particulars can always be given at a subsequent date by a party and Tribunal would have jurisdiction to admit them. The contention cannot be accepted. Section 90(2) of the Act provides that the case is to be tried by the Tribunal in accordance with the procedure applicable under the Civil Procedure Code to the trial of suits. The whole of the Civil Procedure Code is not made applicable and the pleadings of the petition are not governed by the provisions of Orders VI and VII. The Representation of the People Act is a special enactment which governs the trial of Election cases and Chapter II deals with Election petitions, their presentation, parties to be impleaded, the contents of the petitions and the relief that can be claimed by the petitioner. An election petition will therefore be governed by the provisions contained in Chapter II and the trial of the petitions will be governed by Chapter III but the procedure to be followed at the trial will be as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code to the trial of suits as mentioned in Section 90(2). When Section 83(2) provides that a verified list shall accompany the petition the general—provisions of the Civil Procedure Code under Order VI and VII cannot be invoked to override that special mandatory provision and permit the filing of a subsequent list not accompanying but following a petition.

14. As stated at page 380 of the Law of Elections and Election Petitions in India by Nanakchand, the provision of Section 83(2) is framed with a view to give the earliest possible notice of the charges relied upon by the petitioner to the respondent and to prevent his being harassed by fresh matter being introduced at later stages. Section 83 makes it specific that the particulars shall be incorporated in a list accompanying the petition and not that they shall be stated in the petition. As shown there, the mandatory provision in the Act itself that the list should accompany the petition is a departure from previous provisions. There is no provision in the Act for the amendment of the list itself. Section 83(3) only permits the amendment of particulars in the list. Amplification by giving fuller and better particulars already existing in the list may be permissible but no new list can be filed subsequent to the filing of the petition nor can the list itself be allowed to be amended subsequently.

15. The particulars are under the present Act required to be given in a list which is to accompany the petition. The Election Rules of 1920 did not contain any provision regarding the filing of a list along with the petition. The view taken in cases decided under those Rules when filing of the list was not obligatory will not apply to cases governed by the Representation of the People Act which by Section 83 and not by any rule requires the list of particulars to accompany the petition. When the list is to accompany the petition and the petition is to be filed within the time specified in rule 119, it does come to this that the list is to be filed within that period of limitation. Allowing a new list to be filed would be tantamount to permitting the petitioner to make allegations about corrupt and illegal practices after the period of limitation. When the petitioner's subsequent list reached the Commission on 9th June, 1952, that period had already expired and Shri Sudhalkar was right in urging that such a list cannot be permitted to be used as a list of particulars of corrupt and illegal practices accompanying the petition. It is clear, therefore, that the defect of not filing the list of corrupt and illegal practices as required by Section 83(2) along with the petition cannot be allowed to be cured by petitioner's forwarding another list subsequently to the Election Commission.

16. Even that list sent subsequently is substantially the same list so far as the contents are concerned. The only substantial difference is with regard to the statements at the foot which are with reference to the paragraphs of the list. The contents suffer from the same infirmities as the list accompanying the petition and are no particulars at all.

17. The above findings lead to this that the petition aims at getting declared the election of respondent No. 1 void or the election in general void on the basis of corrupt and illegal practices but there is no list of particulars furnished as required by law. When there are not particulars, as there is no list, there can be no trial on the allegations of corrupt or illegal practices and therefore there is no option left to the Tribunal but to dismiss the petition. The Tribunal has observed that it has under Section 90(4) a discretion in the matter of dismissing a petition or not for the non-compliance of the provisions of Section 83 of the Act but the

Tribunal finds on comparison of the verifications made at the foot of the petition, the list accompanying this petition and the subsequent list forwarded to the Commission that the petitioner is negligent and does not know his own mind. Paragraph 4 of the petition which is practically the same as paragraph 2 of the accompanying list states that para. 4 of the petition is true according to the information and belief of the petitioner. The statement at the foot of the accompanying list states that para. 4 of the petition is true to the knowledge of the petitioner. The verification at the foot of the subsequent list states that para. 2 is true to the information received and believed to be true. Again, as already pointed out there can be no trial in the absence of valid particulars properly verified. The Tribunal has, therefore, to exercise its powers under Section 90(4) of dismissing the election petition. The result is that the preliminary objection succeeds and the Election Petition should be dismissed. So far as the cost of the petition is concerned, the Tribunal directs that petitioner should pay Rs. 100 by way of costs of and incidental to the petition to respondent No. 1.

ORDER

The petition is dismissed. The petitioner should bear his own cost and pay respondent No. 1 Rs. 100 by way of costs of and incidental to the petition.

B. C. VAKIL,

17th September 1952.

Chairman, Election Tribunal.

T. P. GHOGALE,
A. A. ADARKAR,

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Members of the Election Tribunal.

P. S. SUBRAMANIAN,

Officer on Special Duty.

